



# House of Representatives

General Assembly

**File No. 729**

January Session, 2013

Substitute House Bill No. 6667

*House of Representatives, May 6, 2013*

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING THE LIABILITY OF AN EMPLOYER WHO DISCIPLINES OR DISCHARGES AN EMPLOYEE ON ACCOUNT OF THE EXERCISE OF CERTAIN CONSTITUTIONAL RIGHTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-51q of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2013*):

3 (a) For the purposes of this section, "employer" does not include the  
4 state or any instrumentality or political subdivision thereof.

5 (b) Any employer [, including the state and any instrumentality or  
6 political subdivision thereof,] who subjects any employee to discipline  
7 or discharge on account of the exercise by such employee of rights  
8 guaranteed by the first amendment to the United States Constitution  
9 or section 3, 4 or 14 of article first of the Constitution of the state of  
10 Connecticut, [provided such] which activity does not substantially or  
11 materially interfere with the employee's bona fide job performance or  
12 the working relationship between the employee and the employer,

13 shall be liable to such employee for damages caused by such discipline  
14 or discharge, including punitive damages, and for reasonable  
15 attorney's fees as part of the costs of any such action for damages. If  
16 the court determines that such action for damages was brought  
17 without substantial justification, the court may award costs and  
18 reasonable attorney's fees to the employer. It shall not be a defense to  
19 an action filed under this section that such activity by an employee  
20 was within the scope of the employee's employment.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	October 1, 2013	31-51q
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**JUD**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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**OFA Fiscal Note****State Impact:**

Agency Affected	Fund-Effect	FY 14 \$	FY 15 \$
Various State Agencies	GF - Potential Savings	See Below	See Below

**Municipal Impact:** None

**Explanation**

The bill, which exempts state agencies from liability from certain instances of discipline and discharge, may result in a potential savings to various state agencies. To the extent that a state agency may have otherwise been sued by a disciplined or discharged employee, the agency may save on damages, including punitive damages, and attorney's fees. These savings may be mitigated, however, should affected employees elect to pursue legal remedy under existing whistleblower or anti-discrimination laws.

The bill also eliminates certain defenses in suits brought under the affected statute. There is no fiscal impact arising from this provision of the bill.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sHB 6667*****AN ACT CONCERNING THE LIABILITY OF AN EMPLOYER WHO DISCIPLINES OR DISCHARGES AN EMPLOYEE ON ACCOUNT OF THE EXERCISE OF CERTAIN CONSTITUTIONAL RIGHTS.*****SUMMARY:**

Under current law, public and private employers are liable to an employee they discipline or discharge for conduct protected by certain constitutional rights, unless the conduct interferes with job performance or the employer-employee relationship. The rights are those guaranteed by the First Amendment to the U.S. Constitution (i.e., freedom of speech, press, religion, and assembly) and similar state constitutional provisions. Employers are liable for damages, including potential punitive damages and reasonable attorney's fees.

This bill eliminates the liability for public employers (i.e., the state, its agencies, and political subdivisions) and thus, the protection public employees currently have under this statute. However, public employees have other protections for their rights (e.g., state whistleblower laws, which protect speech about government misconduct, and anti-discrimination laws).

The bill also prohibits private employers from using as a defense that an employee exercised one of the constitutional rights listed above within the scope of his or her employment. But the effect of this provision is unclear in the context of the First Amendment's free speech protections. Under case law, the First Amendment does not protect an employee's speech made within the scope of employment (see BACKGROUND). It is therefore unclear whether case law bars employees from bringing these claims in the first place or the bill would permit them to proceed.

Under current law and the bill, if an employee sues his or her employer under this provision without substantial justification, the employer can recover its costs and reasonable attorney's fees.

EFFECTIVE DATE: October 1, 2013

## **BACKGROUND**

### ***Speech Within the Scope of Employment***

In *Perez-Dickson v. City of Bridgeport*, 304 Conn. 483 (2012), the Connecticut Supreme Court adopted the rule established by the U.S. Supreme Court in *Garcetti v. Ceballos*, 547 U.S. 410 (2006), that when public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline. In *Schumann v. Dianon Systems, Inc.*, 304 Conn. 585 (2012), the court expanded on its ruling in *Perez-Dickson* to apply the *Garcetti* rule to private employees as well as public employees.

In these cases, the court applied the *Garcetti* rule to claims under the statutory provisions the bill addresses (CGS § 31-51q) based on First Amendment grounds only. The court did not rule on whether the state constitution's speech provisions should be interpreted differently than the First Amendment's or whether a claim brought on state constitutional grounds would be barred by the *Garcetti* rule.

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 38      Nay 6      (04/19/2013)